

PART III. DOLLARS TO BE ACCOUNTED FOR

13. My analysis of Ms. Kennedy's financial records led me to conclude that an amount of \$912,390, representing cash outflows from Kennedy's various accounts during the period under review, warranted investigation [Interim Report # 2, Pages 5 & 6 and Tab 3 thereof].
14. During my Examination of Carl Collins, Mr. Gonzalez, then legal counsel for Carl Collins, and Mr. Welsford, legal counsel for Ms. McDowell, confirmed that they took no issue with the amount of \$912,000. [Collins Transcript, Volume II, Page 371, lines 16-20].
15. On the 17th day of May 2012, Mr. Collins filed a Notice of Change of Solicitor. From that point forward, Mr. Collins was not represented by legal counsel.
16. At his Examination on June 8, 2012, Mr. Collins testified that he was not sure if he could agree that the amount of \$912,000 "...is absolutely correct, or as to where it all went..." [Collins Transcript, Volume III, Page 424, Lines 1-20]. During his Examination by Mr. Welsford, Mr. Collins accepted the amount of \$912,000 as referenced in my Interim Report #1. [Collins Transcript, Volume III, Page 592, Lines 12-22].
17. On the basis of the above, I remain of the view that the amount of \$912,390 is the appropriate starting point for the purpose of my inquiry into the financial affairs of Kennedy.

PART IV. SUMMARY OF EVIDENCE

(a) Examination of Ruth McDowell

18. Ruth McDowell was examined under oath by me and by legal counsel on February 10, 2012. Her evidence provided background information as to her relationship with Kennedy prior to the period May-June 2005, as well as background information into pertinent events for the period post-May/June 2005.
19. While Ms. McDowell held a Power of Attorney from Kennedy dated 1998, I accept, without reservation, Ms. McDowell's evidence that she never exercised said Power of Attorney on behalf of Kennedy after May/June 2005, she was not involved in any of the transactions that comprise the \$912,390, has no personal knowledge of any pertinent details of the \$912,390 and has not personally benefitted from any monies that comprise the \$912,390.

(b) Examination of Other Witnesses

20. As will become evident from a reading of this Final Report, I consider the evidence of other parties examined – Carl Collins, Greg Collins, John Fullerton, Roselle Murphy and Paul Rodger – to be inter-connected and inter-related.
21. As such, I refer herein to the evidence of John Fullerton, Roselle Murphy and Paul Rodger, primarily, in the context of the Examination evidence of Carl Collins.
22. The Examination evidence of Greg Collins is particularly noteworthy relative to the liquidation of the Manulife RIF, the question of whether Kennedy “gifted” her assets to Carl Collins, and if so, when and how she did so. His evidence is also relevant to demonstrate that matters related to taxation dominated the discussions of what was to happen relative to Kennedy’s assets.

(c) Examination of Carl Collins

(i) Ownership of Assets

23. Throughout this matter, Mr. Collins adopted the position that Kennedy “gifted” her assets, whether comprised of funds held in a bank account, RIFs, shares etc. to him, “to do with what he wanted”, and as early as 2003 and at various times thereafter. Mr. Collins’ evidence was that Kennedy was motivated, in part, to do so given her close personal relationship with Mr. Collins and his wife, and given the fact that Kennedy was aware that Mr. Collins did not have in place any pension from which to fund his retirement. **[Collins Transcript, Volume I, age 54, Lines 21-25; Page 55, Lines 1-6].**
24. This position was first raised by Mr. Collins in Paragraph 18 of his Affidavit dated October 11, 2011 **[Record on Application, Page 236]**. Mr. Collins maintained this position throughout his evidence given on Examination. **[Collins Transcript, Volume I, page 54, Lines 21-25; Page 55, Lines 1-7; Page 79, Lines 12-15; Page 95, Lines 15-16; Page 97, Lines 24-25; page 100, Lines 16-22; Page 103, Lines 4-10 and Lines 18-19; Page 104, Line 6; Page 141, Lines 24-25; Page 142, Lines 1-2].**
25. Mr. Collins took the position that he was at complete liberty to access, for his personal use and discretion, every account that was set up at any financial institution by Kennedy as a joint account with he and Kennedy as Account Holders **[Collins Transcript, Volume I, Page 54-56; Page 79, Lines 8-15].**
26. Mr. Collins’ position that Kennedy, in effect, gifted her assets - in whatever form - to him is called into question for a number of reasons:

- Mr. Collins readily acknowledged that he has no documentation to support his position, save and except the documents signed at a financial institution to open the various accounts. [Collins Transcript, Volume III, Page 426, Lines 1-25; Page 427, Lines 10-12; Page 443, Lines 16-25; age 449, Lines 1-3];
- The assertion that Kennedy gifted her assets to Mr. Collins is inconsistent with his evidence that Kennedy made a number of gifts of monies to various members of Mr. Collins' family. [Collins Transcript, Volume III, Page 113, Lines 11-12; Page 385, Lines 1-14; Page 388, Lines 1-20; Page 425, Lines 14-20; Page 457, Lines 1-25; Pages 458 – 459]. If, as he believed, Kennedy had previously gifted her assets to him, any subsequent gifts to family members would have been from Mr. Collins and not from Kennedy;
- In December 2006, Mr. Collins presented to Mr. Fullerton a document which Mr. Collins described as being the Last Will of Kennedy bearing a date a date of September 2, 2005, wherein Ms. Kennedy made a bequest of 500 Bank of Nova Scotia ("BNS") shares to her colleague John MacArthur. Such a bequest is inconsistent with the premise that Kennedy gave the BNS shares to Mr. Collins in July-August 2005 or earlier [Tab # 1];
- At various time during his Examination, Mr. Collins referred to the bank accounts as "Rhona's accounts", "her accounts etc....again, inconsistent with the premise that these said accounts belong, legally and beneficially, to Mr. Collins [Collins Transcript, Volume I, Page 157, Lines 1-10; Page 193, Lines 19-20];
- Relative to the BNS shares, it was the evidence of Mr. Fullerton and Mr. Rodger that these shares belongs to Ms. Kennedy and not to Mr. Collins [Fullerton Transcript, Page 8, Lines 1-4; Page 15, Lines 1-17; Page 21, Lines 14-25; Page 22, Lines 1-3; Page 27, Lines 16-25; Page 29, Lines 21-24; Page 37, Lines 13-20; Scotia McLeod Transcript, Page 39, Lines 1-10; Page 45, Lines 11-13; Page 49, Lines 20-23; Page 61, Lines 21-25];
- The fact that all of the income relative to the BNS shares and the RIF, including all dividend income thereon and all capital gains triggered by the realization thereof, were reported on Kennedy's income tax is not consistent with the premise that these assets belonged to Mr. Collins prior to 2007, 2008 and 2009;
- The premise that Ms. Kennedy had gifted her assets to Mr. Collins is inconsistent with the discussion that took place at the Rocmaura Nursing home on June 23, 2010 between ScotiaMcLeod officials, Mr. Collins and Mrs. Kennedy. [Interim Report # 2, Tab2]. In the meeting on June 23, 2010, the comments from Mr. Collins are in the context of the BNS shares belonging to Ms. Kennedy and not to him. [Scotia McLeod Transcript, Page 66, Lines 13-25; Page 67, Lines 1-8].

27. The Court has provided to me and to legal counsel for the parties a copy of the New Brunswick Court of Appeal decision in **Kerr Estate v. Doiron 1998 CanLII 12186**, wherein the Court of Appeal expressed concerns with any attempt to determine the ownership – legal and beneficial – to joint accounts based on summary proceedings in the nature of a Notice of Application as opposed to a trial.
28. I am of the view that the proceedings in this matter before me as Referee have not followed the typical mode of proceedings one might expect in a “normal” Application under Rule 16. There was no exclusive reliance upon Affidavit evidence. A total of six (6) witnesses were examined at length, and a huge volume of documents were reviewed prior to and during the Examinations. The parties were granted an opportunity to be heard, and did in fact give evidence under oath. The mode of proceeding allowed for the assessment of the credibility of witnesses.
29. I am also aware of the jurisprudence enunciated in the Supreme Court of Canada in **Pecore v. Pecore**, and the doctrines of resulting trust and the presumption of advancement relative to property described as being held “jointly, including joint bank accounts.
30. Finally, I am of the opinion that the discretion afforded to me under Rules 56 and 57 afford me the basis upon which to reach an opinion as to whether Carl Collins has established whether Kennedy did conveyed her assets - in whatever form – to Mr. Collins as a gift *inter-vivos*.
31. Based on the entirety of the evidence in this matter, I am of the opinion that Carl Collins has not established that Kennedy did make an *inter-vivos* gift of her assets to him wherein he, as a matter of right, could do with the assets whatever he wanted. Thus, this inquiry has been undertaken on the premise that the entire \$912,390 identified in Interim Report # 2 was properly before this inquiry.
32. It should be noted that neither Mr. Collins or his legal counsel ever objected at any time during these proceedings to Mr. Collins being subjected to my inquiry on the basis that the legal and beneficial interest in the assets under investigation belonged to him absolutely, and were, as a matter of law, beyond the scope of my inquiry into the financial affairs of Ms. Kennedy.

(ii) Credibility of Carl Collins

33. To state that the credibility of Carl Collins is crucial to any resolution of the issues that have arisen during the course of my inquiry would be an understatement of the largest magnitude.
34. Kennedy has been and continues to suffer from dementia. The parties, the Court and I have all concluded that an examination of Kennedy with a view to ascertaining the details of her

financial affairs would be futile. Therefore, Kennedy was never examined in any manner during my inquiry.

35. Mr. Collins was examined by me and by legal counsel for a period of approximately 16 hours over three (3) days.
36. On some issues, Mr. Collins was able to display a recall of specific events or conversations that took place 6-7 years ago, most notably conversations between Kennedy and various members of the Collins family on a cruise during 2003.
37. On several issues, the evidence given by Carl Collins was supported by documentation and/or the evidence of 3rd parties. For example:

- (a) Mr. Collins took the position, and generally held that position throughout the course of his Examination, that the Bank of Nova Scotia share certificates held by Kennedy were sent to him directly by John MacArthur from Toronto in the period June-July 2005. [**Collins Transcript, Volume I, Page 15, Lines 22-25; Page 16, Lines 1-9; Page 18, Lines 7-13**]. In an email to Ruth McDowell dated August 26, 2005, Mr. MacArthur wrote that he had sent the share certificates directly to Kennedy. In a recent exchange of emails to me, Mr. MacArthur clarified his position, and indicated that he "probably" sent the share certificates to Carl Collins directly, based on a letter from Carl Collins to him dated June 13, 2005 wherein Carl Collins advised Mr. MacArthur to send the contents of Kennedy's Safety Deposit Box to Mr. Collins business address in Saint John, N.B. [**Tab # 2**].

I am prepared to accept, on a balance of probabilities, that Mr. MacArthur did in fact send the share certificates directly to Mr. Collins in mid-2005 notwithstanding Mr. MacArthur's advice to Ms. McDowell that he had sent the share certificates directly to Kennedy.

- (b) Mr. Collins testified that he did not receive any diamonds or engagement ring belonging to Kennedy from Mr. MacArthur. [**Collins Transcript, Volume I, Page 18**]. In a recent email to me, Mr. MacArthur confirmed that he had sent these items to Ms. McDowell and not to Mr. Collins. [**Tab # 2**].
- (c) Mr. Collins testified that he had concerns about the amount of fees being charged by Scotia McLeod, fees which he testified were in the range of \$5,500-\$6,500 per year. [**Collins Transcript, Volume I, Pages 147 to 151**]. Mr. Rodger, in his Examination evidence, confirmed that fees of this magnitude were in fact being charged by Scotia McLeod. [**Scotia McLeod Transcript, Page 81, Lines 23-25; Page 82, Lines 1-8**].

Notwithstanding the above, there were many instances in which Carl Collins' evidence was contradicted by documentation, by oral evidence of 3rd parties, and by his own evidence.

Given the importance that I attach to Mr. Collins' credibility, I believe it is necessary to draw specific references to a number of instances wherein I believe Mr. Collins credibility has been seriously undermined.

- (d) Mr. Collins testified that the July 2005 Power of Attorney was the only Power of Attorney that he held on behalf of Kennedy subsequent to July 2005. **[Collins Transcript, Volume I, Page 8, lines 19-25; Page 9, Line 1-2]**. Mr. Collins held a ScotiaMcLeod Power of Attorney on behalf of Kennedy bearing date August 29, 2007 **[Record on Application, Page 270]**.
- (e) Mr. Collins testified that Kennedy's bank accounts at the Bank of Nova Scotia were sent up as "joint accounts" as early as July 2, 2005. **[Collins Transcript, Volume I, Page 58, Lines 1-9]**. However, BNS Account 80002 48802 26 was opened on August 9, 2005, and BNS Account 30064 01865 89 was opened on April 18, 2006. **[Record on Application, Pages 245 and 249, respectively]**. Mr. Collins attempted to distance himself from his prior evidence on this point after having been directed to Pages 245 and 249 of the Record on Application. **[Collins Transcript, Volume I, Page 59, Lines 1-13]**.
- (f) Mr. Collins testified that there was "... very little going into "...Account # 8002-18340-10 after Kennedy moved to Saint John, NB. **[Collins Transcript, Volume I, Page 64, Lines 15-25, Page 65, Lines 11-17]**. My analysis reveals total cash inflows of \$43,553 into this Account and total cash outflows of \$185,049 from this Account in the period July 2005 to November 2008. **[Interim Report # 2, Tab # 3, Pages 3(a)(i) and (ii)]**.
- (g) Mr. Collins testified that Kennedy had endorsed the BNS share certificates in August 2005. **[Collins Transcript, Volume I, Page 97, Lines 10-12; Page 98, Lines 1-6]**. John Fullerton testified that Kennedy endorsed the BNS share certificates in December 2006 and that he was physically present to witness Kennedy's signature thereon. **[Fullerton Transcript, Page 12, Lines 20-25; Page 13, Lines 1-4]**. In direct response to the only question from legal counsel for Mr. Collins to the effect that "...they were signed by Miss Kennedy in front of you on December 28, 2006"", Mr. Fullerton responded, "Absolutely". **[Fullerton Transcript, Page 65, Lines 6-10]**.
- (h) Contrary to his earlier statement that Kennedy signed the share certificates in August 2005, Mr. Collins, after having been advised that the BNS share certificates were dated December 28, 2006, then testified that Kennedy signed the BNS share certificates the night before – December 27, 2006 – they were given to John Fullerton. **[Collins Transcript, Volume I, Page 101, Lines 12-16]**.
- (i) Mr. Collins testified that he and Mr. Fullerton went, together, to the Bank of Nova Scotia in North End of Saint John to retrieve the share certificates from Kennedy's Safety Deposit Box.

[Collins Transcript, Volume I, Page 1-5]. Mr. Fullerton testified that he had never visited the Bank of Nova Scotia North End Branch for the purpose of retrieving the contents from Kennedy's Safety Deposit Box. [Fullerton Transcript, Page 9, Lines 1-9].

- (j) Mr. Collins testified that he, during a meeting held on December 28, 2006 between himself, Mr. Fullerton and Kennedy, told Mr. Fullerton that Kennedy had given him, Mr. Collins, the BNS shares, and as such, he, Mr. Collins, was at liberty "...to do with what I wanted...". [Collins Transcript, Volume I, Page 100, Lines 16-22]. Mr. Fullerton testified that no such conversation ever took place. [Fullerton Transcript, Page 15, Lines 6-17].
- (k) Asked about his discussions with Mr. Fullerton relative to a liquidation of the investment portfolio, Mr. Collins referenced the BNS shares as being Kennedy's shares, thereby contradicting his previously stated position that Kennedy has gifted the BNS shares to him. [Collins Transcript, Volume I, Page 106, Lines 10-14].
- (l) Mr. Collins testified that he instructed Manulife during 2009 to liquidate a RIF held in the name of Kennedy pursuant to the Power of Attorney. [Collins Transcript, Volume I, Page 124, Lines 11-22]. He testified that he did not know why he had done so. He then testified that he had so instructed Manulife in order to get funds for Kennedy's income tax. [Collins Transcript, Volume I, Page 123, Lines 19-25; Page 124, Lines 1-18]. Upon further questioning, Mr. Collins finally admitted that the net proceeds received from the liquidation of the RIF were given to his son, Greg Collins, and put into a trust account for the purchase of a condominium for his son. [Collins Transcript, Volume I, Page 126, Lines 6-14]. In addition, a review of the income tax affairs of Kennedy reveal that no portion of the RIF proceeds were ever used by Mr. Collins as a payment against Kennedy's income tax account with CRA. While funds were withheld by Manulife from the RIF and remitted to CRA [Interim Report # 2, Tab 2B], the entire net proceeds of \$43,500 received from the liquidation of the RIF was provided to Greg Collins by Mr. Collins. [Collins Transcript, Volume I, Page 129, Lines 11-14].
- (m) Mr. Collins testified that he was not aware of any gift of monies from Kennedy to his son Greg Collins save and except the \$43,500 referenced above relative to the Manulife RIF [Collins Transcript, Volume I, Page 132, Lines 6-12]. At a subsequent Examination, Mr. Collins produced a schedule, marked as Exhibit # 2, depicting what he testified was a gift of \$6,500 from Kennedy to his son Greg Collins. [Collins Transcript, Volume III, Tab # 8].
- (n) Mr. Collins confirmed that he advised CRA collection officials that Kennedy's income was being used to pay for the cost of her nursing home [Collins Transcript, Volume II, Lines 15-19]. In my opinion, such a statement to CRA officials during late 2011 is less than full disclosure. All of the income of Ms. Kennedy, especially the income generated from the sale of the BNS shares in February 2007 and June 2008, as well as the income generated from

the liquidation of the RIF in 2009, was not going to pay for Kennedy's costs at the nursing home. In fact, Greg Collins received the \$43,500 from the liquidation of the RIF.

- (o) Mr. Collins advised CRA collection officials that Kennedy had no property other than CPP, OAS and BNS pension income. **[Collins Transcript, Volume II, Page 270, Lines 1-23]**. Mr. Collins did not advise CRA collection officials that Kennedy had BNS shares lodged with Scotia McLeod, and his assertion that he did not believe these shares constituted "property" rings hollow.
- (p) Mr. Collins testified that Kennedy had asked John MacArthur to send the contents of her Toronto safety Deposit Box to Mr. Collins. **[Collins Transcript, Volume II, Page 213, Lines 1-11]**. The documentation provided to me by Mr. MacArthur indicates that it was Mr. Collins that requested that the contents be sent directly to him **[Tab # 2]**.

(d) Examination of Greg Collins

- 38. Greg Collins testified as a result of Carl Collins' evidence that he, Greg Collins, received \$43,500 from the liquidation of a Manulife RIF in the latter part of 2009.
- 39. Greg Collins' evidence is noteworthy in four (4) significant respects:
 - His evidence relation to taxation;
 - His evidence relative to the RIF proceeds and the resulting investment in a condominium;
 - His evidence relative to whether Kennedy gifted her assets to his Father or was planning to do so at a later point on time, and,
 - The obvious dichotomy in his ability to recall events that support Carl Collins' position relative to ownership/entitlement to assets and his inability, on many questions, to recall specifics.
- 40. Greg Collins gave unqualified answers on the following matters:
 - Carl Collins, during a February 2007 meeting with John Fullerton, expressed the position that the ownership of the BNS hares belong to him, Carl Collins **[Greg Collins Transcript, Page 18, Lines 13-25; Page 19, Lines 1-12]**;
 - He had a conversation with Kennedy in the period June/July 2008 regarding a fixed basic return on investment relative to the \$43,500 invested in a condominium project **[Greg Collins Transcript, Page 77, Lines 1-25]**;

- He advised Kennedy that her return on investment would be in the form of dividend income and that Kennedy agreed with same. **[Greg Collins Transcript, Page 78, Lines 1-25].**
41. Greg Collins' ability to recall the above is to be contrasted with his inability to recall specifics on a number of details referenced to matters on which he testified. According to my review of the transcript of his evidence, Greg Collins answered in words that he could not recall or he could not provide specifics in excess of twenty (20) times in response to questions from the undersigned and from Mr. Welsford. **[Greg Collins Transcript, Page 6, Lines 16; Lines 24-25; Page 13, Line 4; Page 20, Line 20; Page 25, Line 20; Page 30, Line 24; Page 31, Line 10; Page 32, Line 7 and 16; Page 29, Line 25; Page 40, Lines 1-3; Page 50, Line 20; Page 53, Line 8; Page 55, Line 10; Page 58, Line 22; Page 59, Line 18; Page 65, Line 4; Page 67, Line 4; Page 71, Line 15; Page 73, Line 9; Page 82, Line 14; Page 87, Line 7; Page 95, Line 19; Page 89, Line 23].**
 42. Greg Collins also gave contradictory evidence as to whether Kennedy had gifted her assets to Carl Collins, perhaps as early as 2003, or was intending to gift her assets to Carl Collins and his wife through her Last Will.
 43. Greg Collins testified that Kennedy had acknowledged to BNS officials in August 2007 "....that she had given all of her funds to my father...." **[Greg Collins Transcript, Page 68, Lines 1-8; 19-25; Page 69, Lines 1-12].**
 44. Greg Collins testified that Kennedy, in a June 23, 2010 meeting with ScotiaMcLeod officials, acknowledged that she "....had already given the money to Carl and that what Carl wants to do with it is up to him..." **[Greg Collins Transcript, Page 55, Lines 21-25].**
 45. In contrast to the above, Greg Collins gave evidence that is consistent with the view that, while Kennedy may have indicated a desire to confer a gift of her assets upon Carl Collins and/or his wife, she did not do so in fact in 2003 but rather, was intending to do so through her Last Will, as referenced below:
 - Various discussions with Kennedy were in the context of her entire estate and funds "were to go" to Carl Collins and his wife. **[Greg Collins Transcript, Page 18, Lines 8-12; Page 36, Lines 9-14].** Greg Collins' evidence on these points is entirely consistent with the Last Will drawn in August 2007 **[Record on Application, Pages 255-259];**
 - Greg Collins referenced a February 2007 discussion with John Fullerton in the context of "....some of the decisions that Rhona was going to do with her estate...." **[Greg Collins Transcript, Page 24, Lines 15-20].** Greg Collins also referenced this discussion in the context of "....your estate money..." **[Greg Collins Transcript, Page 25, Lines 1-7].** The use of the

words “her estate” and “your estate” are not consistent with the view that Kennedy had previously gifted her estate to Carl Collins;

- Greg Collins testified “... that the estate and funds were supposed to be given to my father and that’s what the new will and testament was to be derived from...” [Greg Collins Transcript, page 37, Lines 20-22]. This evidence of Kennedy’s desires is consistent with a future gift of assets;
 - Greg Collins characterized the 2003 discussion between Kennedy and various members of the Collins’ family as “...what Rhona wanted to do with her money, and that she was contemplating on whether or not to give power of attorney or control of her estate and funds to my father.” [Greg Collins Transcript, Page 58, Lines 12-16];
 - Greg Collins testified as to subsequent discussion during 2006 and 2007 during which Kennedy “...said she was going to give you or your family or your father money....”[Greg Collins Transcript, Page 62, Lines 167-15];
 - Greg Collins gave evidence that Kennedy advised Mr. Harrington of the BNS that “... she was going to give money to my father, and that the money, the estate, and everything at that particular time was going to him anyways...”[Greg Collins Transcript, Page 67, Lines 19-25; Page 68, Lines 1-8];
46. Based on the Examination of Greg Collins, there is no doubt that the subject matter of tax was an integral aspect of various discussions revolving around the sale of Kennedy’s investments. Greg Collins’ discussion with Carl Collins over the past 5-7 year period included a discussion of “... tax liabilities to her Estate...”. [Greg Collins Transcript, Page 30 Lines 22-25; Page 31, Lines 1-1]. Greg Collins testified that the discussion with John Fullerton was motivated by a desire to “... get advice on what to do with this Estate to avoid tax....” [Greg Collins Transcript, Page 45, Lines 11-13]. Greg Collins also appeared to be aware that the liquidation of investments during the lifetime of Kennedy would trigger tax. He stated “...I don’t think that there is any way to avoid the tax issue when you are cashing out...”. [Greg Collins Transcript, Page 79, Lines 11-13].
47. A most telling aspect of Greg Collins’ evidence relative to the discussion relative to tax planning was that related to “...a certain amount taxation was in her estate. (Emphasis added) Whatever that amount came to at the end of the day, that was never determined, because obviously that’s why we are sitting here today...” Greg Collins Transcript, Page 21, Lines 19-25, Page 22, Lines 1-4].
48. Greg Collins gave evidence as to the investment of the net proceeds of \$43,500 realized from the 2009 liquidation of the Manulife RIF. As per Greg Collins Transcript, he testified that:

- Carl Collins advised him that the RIF had been cashed in [Page 12, Lines 20-25];
- The \$43,500 was to come from Kennedy for the investment [Page 13, Lines 9-12];
- The real estate investment was to be held in trust for Kennedy and himself. In his view, the investment was a joint investment. No portion of the \$43,500 came from him [Page 14, Lines 8-19];
- He is not aware of any documentation between himself and Kennedy or between Kennedy and others relative to this real estate investment. [Page 14, Lines 23-25, Page 15, Lines 1-2];
- Approximately \$33,000 to \$34,000 of the \$43,500 has been spent. The balance of some \$9,000 to \$10,000 is being held in a bank account in a numbered company. [Page 28-Lines 1-25];
- The return on investment relative to this investment was to be paid to Kennedy via a dividend. [Page 28, Lines 21-25];
- Kennedy owns no shares in this numbered company. Greg Collins owns 100% of the shares in this corporation [Page 29, Lines 1-8];
- There was no particular reason as to why the Manulife RIF was chosen as the source of the \$43,500 [Page 30, Lines 13-16];
- The \$43,000 represented funds that were invested for Kennedy [Page 74, Lines 13-14];
- The expected return on investment of 6%-7% would be going to Kennedy. [Page 75, Lines 19-25];
- He had a conversation with Kennedy as early as June 2008 wherein they discussed a fixed basic return on investment. [Page 77, Lines 1-25, Page 82, Lines 4-10];
- During the course of this June 2008 conversation, Greg Collins advised Kennedy that he would need approximately \$43,500 and that she agreed to be paid a dividend [Page 78, Lines 5-10; Lines 17-25];
- He did not discuss with Kennedy in June 2008 a liquidation of the RIF. [Page 79, Lines 1-4];
- In response to the question "Why did you collapse the RIF", Greg Collins did not deny that he collapsed the RIF. He responded to this question by stating, "At that particular time, I am not a hundred percent sure why" [Page 80, Lines 5-7];

- He did not personally secure the authorization of Kennedy relative to a collapsing the RIF [Page 80, Lines 8-12];
- An amount of \$27,200 from the \$43,500 is being held in trust by the law firm of Mosher Chedore [Page 83, Lines 18-25];
- He would “perhaps” be prepared to return the \$43,500 to Kennedy if it was determined to be in her best interest to do so, subject to a review by his lawyers and accountants [Page 86, Lines 11-20].

49. Greg Collins also testified that the discussion with BNS officials included a discussion of the duties of a holder of a Power of Attorney, that Carl Collins was present at said meeting, and that the documents marked as Exhibit #5 at the Examination [Tab #3] was given to Carl Collins at this meeting with BNS officials. This evidence contradicts the evidence of Carl Collins to the effect that he was not aware of the duties of a holder of a Power of Attorney.

PART V. INCOME TAX STRATEGIES AND RELATED LIABILITIES

50. During the taxation years 2007, 2008 and 2009, Kennedy’s income for income tax purposes was significantly inflated as a result of the sale of BNS shares in 2007 and 2008, and the liquidation of the Manulife RIF in 2009.
51. In 2007, the gross proceeds from a sale of BNS shares and other investments totaled \$198,479.00, with an adjusted cost base of \$65,492. The capital gain reported for tax purposes was \$132,986.74, resulting in a taxable capital gain of \$66,493.37 (i.e. an income inclusion for tax purposes).
52. In 2008, the gross proceeds realized from the sale of 1,500 BNS shares and other securities totaled \$113,095.00, with an adjusted cost base of \$53,227. The capital gain reported thereon was \$59,868.00. The resulting taxable capital gain was \$29,934.00 (i.e. an income inclusion for 2008).
53. In 2009, the Manulife RIF was liquidated, triggering an “excess amount” of \$79,874.20 (i.e. an income inclusion for 2009).
54. Based on my investigation into the financial affairs of Kennedy, it is my opinion that Kennedy was under no requirement at any time during 2007, 2008 or 2009 for additional cash. In other words, Kennedy’s cash flow from her “regular” income sources (i.e. OAS, CPP, BNS pension,

dividend income etc.) was sufficient to satisfy her living requirements during the period 2007, 2008 and 2009. There was no evidence adduced to contradict this assertion.

55. There is no dispute that all of the income from the sale of the BNS securities and the liquidation of the Manulife RIF were reported on the income tax returns of Kennedy. There was no evidence found to support an assertion that anyone other than Kennedy reported any of the income therefrom on their income tax return.
56. I retained the services of Ralph Green, CA, to undertake a tax calculation with a view to quantifying the tax costs, excluding interest and/or penalties, associated with the above referenced sale of BNS securities and the Manulife RIF in the respective years 2007, 2008 and 2009. The results of Mr. Green's analysis are attached hereto as **Tab # 4**.
57. According to Mr. Green's calculation, the incremental tax triggered by the sale of the BNS securities and the Manulife RIF totaled \$58,898.17 over the taxation years 2007, 2008 and 2009.
58. There is no question that the gains accruing on these assets held in the name of Kennedy would have been, eventually, subject to income tax. Even if these investments had not been sold, there would have been a deemed disposition thereof for tax purposes upon Kennedy's death.
59. The tax consequences of these dispositions demonstrates, in my opinion, the weakness in the described tax planning strategy of liquidating portions of Kennedy's portfolio while she was alive in the hopes of minimizing taxes would otherwise arise upon her death.
60. I have been involved with the Chartered Accountancy profession for some 30 years, and I have always adopted the dictum that a deferral of taxes was the next best alternative to an outright avoidance of taxes (to be distinguished from evasion of taxes!) unless there were otherwise valid reasons to incur, prematurely, income tax.
61. There is no evidence to justify the premature triggering of taxes in the name of Kennedy. At the time that significant increases in her taxable income are being triggered during 2007, 2008 and 2009, Kennedy has more than sufficient income from her "regular" sources by which to maintain herself, either in her own apartment or at a nursing home. In short, there is no evidence at all to lead one to conclude that Kennedy had a cash-flow requirement that necessitated selling her investments. All of the evidence points entirely to an opposite conclusion.
62. The reference by Greg Collins to "... taxation was in her estate..." causes me to seriously question whether the real motivation underlying the liquidation of securities was to maximize the amount of income tax in Kennedy's name while she was alive, with a view to depleting of all or a portion of her assets before she died, leaving no remaining assets in her Estate to be used to satisfy tax debts assessed in the name of Kennedy, including interest and penalties arising

from late filed tax returns and the failure by Mr. Collins to ensure that Kennedy's tax debts were paid on a timely basis.

63. Whether this was in fact the real motivation of Mr. Collins, I am unable to say with certainty. I am unable to accept the premise that tax deferral for as long as possible during the remainder of Kennedy's lifetime was not the most beneficial course of action from Kennedy's perspective.
64. When the evidence is viewed in its entirety, one is left to conclude that Kennedy has been assessed by CRA with a significant tax liability comprising taxes (substantially all for the taxation years 2007, 2008 and 2009) interest and penalties, while at the same time her available assets from which to satisfy these liabilities have been significantly depleted. This state of affairs could have been, and, in my opinion, would have been considerably worsened if Mr. Collins had proceeded to dispose of another 1,500 shares of the BNS as he stated he was going to during the June 23, 2010 meeting with officials from Scotia McLeod. [**Scotia McLeod Transcript, Page 98, Lines 15-22; Page 99, Lines 16-25**].

PART VI. ACCOUNTING BY CARL COLLINS

65. Mr. Collins testified that, by Fall 2006, he had stepped forward and assumed effective and complete control over Kennedy's finances. [**Collins Transcript, Volume I, Page 33, Lines 10-24; Page 35 Lines 16-18**].
66. Mr. Collins also testified that his control over the finances of Kennedy continued after Kennedy suffered a broken hip, during 2008-2009 while she was a patient at St. Joseph's Hospital and the Saint John Regional Hospital, and during/after the time period August 2009 when she was admitted as a patient at Rocmaura Nursing Home.
67. At the end of the 2nd day of Mr. Collins' Examination, I conveyed my expectations relative to an accounting by Mr. Collins when we returned for the 3rd day of Mr. Collins' Examination. [**Collins Transcript, Volume II, Pages 368 to 378**]. I followed up my comments at the conclusion of Day 2 of Mr. Collins Examination with a letter to Mr. Welsford and Mr. Gonzalez on or about April 4, 2012 [**Tab # 5**] in order to ensure all parties understood, clearly and completely, the manner in which we would be proceeding with the 3rd day of Mr. Collins' Examination.
68. An attempt to provide an accounting of Kennedy's assets for the period mid-2005 to July/August 2011 was made by Mr. Collins during the 3rd day of his Examination held on June 8th, 2012. At the June 8, 2012 Examination, Mr. Collins presented a six (6) page handwritten document that was marked as Exhibit # 2 to the said Examination, (hereinafter referred to as "the Collins Accounting") [**Tab #8**].

69. The Collins Accounting represents:

- (i) out-of-pocket costs incurred by/on behalf of Kennedy for cruises and tours;
- (ii) gifts by/on behalf of Kennedy to Ms. Kennedy's family, friends and acquaintances;
- (iii) gifts and reimbursements to various members of Mr. Collins' immediate family members;
- (iv) Per diems paid to Chateau Champlain staff for personal services to Kennedy;
- (v) The value of personal services – described as salary - rendered by Mr. Collins to Kennedy, and,
- (vi) The value of storage services provided by Mr. Collins for the storage in his garage of Kennedy's personal effects.

70. Subsequent to the June 8, 2012 Examination, Mr. Collins advised me that he had intended to include the out-of-pocket costs associated with a 3-year car lease in the amount of \$1,088 per month, for a total of \$39,168.

71. According to my calculations, the Collins Accounting totals \$589,418, comprised as follows:

Storage & Costs of moving personal effects	\$ 60,170
Personal services	\$146,400
Cruises & tours	\$223,932
Gifts to family & acquaintances	\$ 11,600
Gifts to Collins family members	\$ 28,328
Per Diems to Chateau Chaplin staff	\$ 6,320
Gifts and reimbursements to Collins' family members	\$ 73,500
Car Lease (\$1,088/month x 36 months)	\$ 39,168
Total as per Collins Accounting	\$589,418

72. I note, in passing, that the difference between the \$912,390 identified in my Interim Report # 2 and the amount of \$589,418 arrived at by Mr. Collins is \$322,972.00. During his Examination, Mr. Collins offered no further insights into this difference of \$322,972.00.

73. I comment on each of the above referenced categories as follows:

Storage & Costs of moving Personal Effects.....\$60,170.00

74. The \$60, 170 is comprised of the costs of moving Ms. Kennedy's personal effects from Chateau Chaplain to Mr. Collins' residence (\$575.00), plus the costs of storing her personal effects in Mr. Collins garage over a period of 87 months at a monthly cost of \$685.00 (total: \$59,595.00).
75. Mr. Collins produced no documentation to support the amount of \$575.00. However, there is no question, based on my inspection of same, that many boxes comprising Kennedy's personal effects were moved from Chateau Champlain to Mr. Collins' residence. The amount of \$575.00 appears to me to be a reasonable amount for packing and moving these effects. I accept this amount of \$575.00 as an appropriate accounting of a portion of the \$912,390.
76. On June 14, 2012, I, with John Morrissy, a law student employed at Barry Spalding, attended at Mr. Collins' residence for the purpose of examining Kennedy's personal effects which were stored, primarily, in a small room at the back of Mr. Collins' car garage.
77. This small room had no electricity. It was rather dirty, musty, and was cramped with personal effects that did not belong to Kennedy. Much of these other personal effects looked to be in the nature of "junk".
78. Many of the boxes containing Kennedy's personal effects looked like they had never been opened since they were put into the small room, as Mr. Morrissy and I had to cut the tape off the boxes. Kennedy's dresser and cedar chest were uncovered, and exposed to the elements (i.e. the cold, dampness etc.).
79. There was excess space in the small room, which would lead one to conclude that Mr. Collins was not required to secure additional storage space for his personal effects as a result of Kennedy's personal effects being stored in this small room. Mr. Collins did not reference, and nor did he provide, any evidence of additional storage costs that he incurred as a result of storing Kennedy's personal effects at the back of his car garage.
80. A few pieces of Kennedy's personal effects – TV, chair, sofa – were located in the downstairs portion of Mr. Collins' house. These effects appeared to be available for Mr. Collins' personal use, although he did advise me that he never used these items.
81. Mr. Collins gave somewhat contradictory evidence relative to Kennedy's authorization of storage costs. [Collins Transcript, Volume III, Pages 443 to 449].
82. At Pages 446, he states that he cannot recall any discussion with Kennedy relative to payment for storage. On Page 447, he states that there would have been a conversation with Kennedy about storage fees as early as May 2005.

83. Mr. Collins testified at Page 447 that he has nothing in writing about a conversation or discussion with Kennedy relative to storage fees.
84. Given this somewhat contradictory evidence and the absence of documentation confirming Kennedy's consent to pay Mr. Collins a storage fee, I do not accept any portion of the \$59,595.00 attributed by Mr. Collins to storage costs as an appropriate accounting of a portion of the \$912,390.

Personal Services.....\$146,400

85. According to Mr. Collins' calculation, he spent an average of 20 hours/week over a period of 244 weeks – a total of 4,880 hours – providing various personal services to Kennedy. It is Mr. Collins' position that these services should be valued at an amount of \$30 per hour, which represents \$146,400 over the period mid-2005 to May 2011.
86. Mr. Collins testified that he never had any discussion with Kennedy whereby he would be entitled to be compensated at any amount for any personal services that he provided to Kennedy. **[Collins Transcript Volume III, Page 450, Lines 8-25; Page 451, Lines 1-8].**
87. In addition, there is no evidence from Mr. Collins to the effect that he has ever reported any portion of the \$146,400 as income on his personal income tax return. Mr. Collins testified that his income during 2007 did not exceed \$25,000 per year. **[Collins Transcript, Volume III, Page 450, Lines 1-11].** At an average rate of \$30/hour for 20 hours over a 52 week period (i.e. 2006 and 2007 year as per **Tab # 8**), these personal services would have totaled \$31,200 for each of 2006 and 2007, an amount which exceeded Mr. Collins' income of \$25,000 for 2007.
88. Finally, charging Kennedy for any type of personal services, whether it be for storage or personal services, is entirely inconsistent with the manner in which Mr. Collins described the "family-like" relationship between Kennedy and his family. **[Collins Transcript, Volume III, Page 387, Lines 15-18; Page 443, Lines 16-17; Page 448, Lines 14-23].**
89. In my opinion, the attempt by Mr. Collins to attribute any portion of the \$912,390 to the costs of storage and personal services is simply his after-the-fact attempt to "rationalize" (i.e. explain away) a portion of the \$912,390 as opposed to an accounting for a portion of the \$912,390. The values attributed to storage and personal services by Mr. Collins are "imputed" values, in the sense that they comprise what Mr. Collins now believes is a fair market valuation for comparable services during the applicable time period.
90. I do not accept any portion of these values imputed by Mr. Collins to personal services as an appropriate accounting for a portion of the \$912,390.

Cruises & Tours.....\$223,932 (\$187,432+\$3,500+\$33,000)

91. On the basis of the evidence adduced, I am prepared to accept the premise that Kennedy did like to travel rather extensively. This position is supported by the vast array of photos of her various travels that I located amongst her personal effects in Mr. Collins' garage.
92. Mr. Collins testified that he was not inclined to allow an elderly lady like Kennedy to travel alone. He testified that a friend of Kennedy – in many cases, Helen Miller – accompanied Kennedy as her guest. Mr. Collins also testified that, on some of her travels, he and his wife accompanied Kennedy as her guest.
93. I am prepared to accept that Kennedy either needed and/or wanted a travel companion on her travel. An elderly woman travelling alone poses certain risks, and is not, under most circumstances, much fun.
94. I am also prepared to accept the premise that Mr. Collins, as Kennedy's Attorney, had an obligation to ensure that her best interests (i.e. personal safety and physical well-being) were protected while Kennedy was travelling, especially so while she travelled outside of Canada.
95. I am not prepared to accept the premise that Kennedy should bear the costs of Mr. Collins' wife joining the travels at the expense of Kennedy. Judy Collins had no legal standing vis-a-vis the protection of Kennedy. There is no evidence to corroborate Mr. Collins' evidence that Kennedy desired to absorb the travel costs associated with Ms. Collins.
96. On the basis of the above, I would reduce the \$187,432 put forth by Mr. Collins as follows:

2005 Bermuda cruise....\$14,800 less (\$3,700 x 3) = 3,700
2005 October cruise\$22,400 less (\$5,600 x 3) = 5,600
2006 Hawaii.....\$38,400 less (\$9,600 x 3) = 9,600
2006 October cruise \$22,400 less \$5,600 x 3) = 5,600
2007 March cruise\$24,000 less (\$6,000 x 3) = 6,000

Total Adjustment.....\$30,500

Revised amount \$187,432 - \$30,500 = \$156,932

97. The costs of \$3,500 attributed by Mr. Collins to the Cuba travels for 2 persons looks reasonable, and I am prepared to accept same.
98. The value of \$33,000 attributed by Mr. Collins to the costs of entertainment while on travels looks rather excessive, especially for an elderly lady such as Kennedy. Mr. Collins has nothing to

substantiate the amount of \$150.00 per day, and when questioned, Mr. Collins could not explain why he increased the \$150.00 per day by a factor of 2.

99. According to Mr. Collins, Kennedy underwent 11 travels during 2005 to 2008. I am prepared to accept that \$1,000 as a reasonable estimate of out-of-pocket costs incurred on each such sojourn, for a total of \$11,000.
100. Thus, I would reduce Mr. Collins estimate of \$33,000 to \$11,000, a reduction of \$22,000.

Gifts to family and acquaintances and staff.....\$11,600 (\$4,000+\$5,600+\$1,500+500)

101. Mr. Collins produced no documentation to substantiate these amounts. Nevertheless, Mr. Collins' explanation for these amounts appeared to me to be reasonable. Thus, I am prepared to accept the \$11,600 as being legitimate expenses having been paid by or on behalf of Kennedy.

Gift to Collins Family Members\$28,328.05

102. Mr. Collins testified that these gifts were made to his children and grandchildren with the approval of and on behalf of Kennedy
103. These amounts, with the exception of the \$3,000 shown as a gift to Carl Collins, could be readily traced to the bank statements for BNS Account "10" and "89" for the time periods noted by Mr. Collins.
104. Mr. Collins attributed these gifts to Kennedy's comments during 2003 to the effect that she wished to provide money to the Collins family members. Mr. Collins testified that he had not discussed these proceedings with his children other than his son Greg Collins. Greg Collins testified that he was not aware of the sources of the \$6,500...he was under the impression that these funds were a gift from his Father and/or Mother.
105. When viewed in its entirety, it is difficult to accept the premise that promises of monetary gifts being made in 2003 are only being satisfied during 2007. One is left to ponder the question...why did Kennedy not make the gifts directly to the Collins children, and why not prior to mid-late 2007?
106. Mr. Collins was unable to produce any supporting documentation from or to Kennedy in an attempt to confirm that she was aware of and did approve these 2007 payments.
107. I am not prepared to accept any portion of the \$28,328.05 as an appropriate accounting of a portion of the \$912,390.

Per Diems to Chateau Champlain staff.....\$6,320.00

108. Mr. Collins produced no documentation to substantiate these amounts. Nevertheless, Mr. Collins' explanation for these amounts appeared to me to be reasonable. Thus, I am prepared to accept the \$6,320.00 as being legitimate expenses having been paid by or on behalf of Ms. Kennedy.

Gifts and reimbursements to Collins family members.....\$73,500

109. Mr. Collins' evidence was that his wife received \$40,000 and he received \$20,000 of the \$60,000 shown on Tab # 8. **[Collins Transcript, Volume III, Pages 467 to 469].**
110. According to Mr. Collins, Judy died on the 26th day of March 2008. **[Collins Transcript, Volume III., Page 471, Lines 11-12].** On the basis of his evidence, I have no doubt that the death of Judy Collins was a sudden and tragic loss to the Collins' family members, and especially so to Mr. Collins.
111. My analysis revealed distinct two (2) amounts of \$40,000 that occurred within Kennedy's accounts.
112. A total of approximately \$188,000 was realized upon the February 2007 sale of the 3,560 shares of the BNS. According to John Fullerton, \$40,000 of these proceeds were taken and invested in a mutual fund for Kennedy in an attempt to diversify her investment portfolio **[See Tab 3ci, Interim report # 2; Fullerton Transcript, Page 44, Lines 15-25].** This amount of \$40,000 comprises the 2nd smaller "joint" investment at Investors' Group, which was subsequently transferred to Scotia McLeod after the shares of the BNS had been lodged with ScotiaMcLeod.
113. Another amount of \$40,000 was identified in my analysis of Account # 26 for the time period June 2008. **[See Tab 3bii, Interim Report #2].**
114. A total of \$110,135 was deposited into Account 26 in June 2008 from the ScotiaMcLeod investments accounts (comprised of \$77,850 + \$32,285.).
115. On June 11, 2008, an amount of \$40,000 was transferred from Account #26 to Account #89. On this same day, the 11th day of June 2008, an amount of \$40,000 was withdrawn from Account #89.
116. As referenced above, these are the only two amounts of \$40,000 – as distinct amounts - which I have discovered in my review/analysis of Kennedy's financial accounts. That being the case, I am lead to conclude that the \$40,000 that Mr. Collins has described as a gift from Kennedy to Judy

Collins was actually paid out from Kennedy's Account "89" **AFTER** Judy Collins was dead. (Emphasis added).

117. Mr. Collins did not describe the \$40,000 attributed to a gift from Kennedy to his wife as having been paid after his wife had died.
118. **Mr. Collins lack of disclosure on this point, in my opinion, seriously undermines his credibility not only as a witness but as the person who had the obligation at all times to account in a manner that is full, fair and frank.**
119. Mr. Collins also testified that \$9,000 was to pay Brennan's Funeral Home for the funeral costs of his wife, and that \$4,500 was paid to reimburse his daughter and her family for their costs in coming to Saint John for the funeral of his wife. He testified that Ms. Kennedy was aware of same, and had approved these amounts. **[Collins Transcript, Volume III, Pages 471 to 474]**. Mr. Collins could provide no documentation to support his position relative to Kennedy having approved these payments of \$9,000 and \$4,500.
120. On the basis of the above, I am not prepared to accept any portion of the \$73,500 as an appropriate accounting towards the \$912,390.

Car Lease.....\$39,168

121. This amount represents the rental costs of a Mercedes-Benz automobile over a three (3) year period September 2008 to September 2011.
122. There is no dispute that all of the monies required to pay the rental costs were paid from BNS Account #89.
123. The lease was signed by and in the name of Mr. Collins personally. **[Tab # 6; Collins Transcript, Volume III, Pages 176-185]**. Mr. Collins justified the lease of the car on the basis that Kennedy wished to be seen as being driven on her sojourns in a nice car.
124. In May 2008, Kennedy suffered a broken hip and then spent the next 15 months being shuffled between St. Joseph's Hospital and the Saint John Regional Hospital before entering Rocmaura Nursing Home in August 2009.
125. Even by Mr. Collins' evidence, one can only conclude that Kennedy's enjoyment of any vehicle for her sojourns during the period September 2008 to September 2011 was minimal, at best. Mr. Collins testified that he took Kennedy out for drives 2-3 times per week, mostly in the greater Saint John area and never outside of the Province of New Brunswick

126. In addition, Mr. Collins never challenged the assertion of Dennis Flood, as per his letter of July 30, 2010, that this vehicle was "primarily" for the use of Mr. Collins. [Interim Report # 2, Tab2].
127. On the basis of the above, I am not prepared to accept the \$39,168 as an appropriate accounting towards the \$912,390.

PART VII. SPECIAL STATEMENT OF FACTS

128. Rule 56.03 (2) of the Rules of Court authorizes a Referee to make a special statement of fact from which the Court may draw inferences.
129. The authority imposed upon a Referee pursuant to Rule 56.03(2) is subject to the unfettered discretion of the Court, pursuant to Rule 56.03(3)(e), to decide any question or issue of fact referred to the referee on evidence taken before the Referee, with or without additional evidence.
130. On the basis of the above authority and having given due consideration to the entirety of the oral and documentary evidence adduced before me in these proceedings, I make the following Special Statement of Facts for the consideration of the Court:
- (a) Carl Collins had a duty to account for any and all of his exercise(s) of the Power(s) of Attorney conveyed by Kennedy and under which he was the Attorney. Carl Collins was made aware of these duties in a meeting with officials from the BNS;
 - (b) By at least the Fall 2006, and perhaps as early as June 2006, Carl Collins was in a position to, and did, assume effective control over all of Kennedy's financial affairs in whatever form her assets were held;
 - (c) Carl Collins did during the period Fall 2006 to mid-2011, on numerous occasions, knowingly, intentionally and deliberately utilize Kennedy's finances for purposes which he was either unwilling or unable to demonstrate were on behalf of or for the benefit of Kennedy;
 - (d) During the period fall 2006 to mid-2011, Carl Collins repeatedly accessed and utilized the assets of Kennedy in a manner in which he was self-dealing, with the result that his financial interests and those of his family members were benefited at the expense of Kennedy's financial interests, and without the approval, knowledge and authorization of Kennedy;
 - (e) Carl Collins was, at best, careless in his administration of the income tax affairs of Kennedy as a result of (i) his failure to file her income tax returns on a timely basis, (ii) by triggering taxable income in the name of Kennedy via a sale of BNS shares and the liquidation of the Manulife RIF in circumstances in which Kennedy had no need for surplus cash, (iii) by his

failure to pay the income tax liabilities of Kennedy from her assets on a timely basis and thereby triggering unnecessary interest and penalties against Kennedy. Whether intentional or not on the part of Mr. Collins, he has caused Kennedy's assets to be prematurely depleted, with the result of triggering, prematurely, tax liabilities, including taxes, and, perhaps, interest and penalties. At worst, Carl Collins may have engaged, knowingly, in a systematic scheme to liquidate Kennedy's assets to the fullest extent possible during her lifetime for his benefit and the benefit of his family members, with a view to minimizing the assets available at her death and through her Estate to satisfy her tax liabilities. I refer in this regard to the comment from Greg Collins relative to "...taxation in the Estate....";

- (f) The amount of \$58,898.71 in taxes triggered by the sale of the BNS investments and the liquidation of the Manulife RIF during the years 2007, 2008 and 2009 would have been a debt which ultimately would have accrued to the Estate of Ms. Kennedy upon her death, since these assets would have been deemed to have been disposed for tax purposes of at their then fair Market Value. As such, Mr. Collins should not, in my opinion, be held accountable for the amount of the tax. However, this does not excuse or justify the careless manner in which Mr. Collins dealt with Kennedy's income tax affairs;
- (g) Carl Collins failed, repeatedly both prior to and during his Examination, to make full, fair and frank disclosure relative to accounting for his exercise of Kennedy's Powers of Attorney. His Affidavit dated the 11th day of October 2011 and filed in response to the Amended Notice of Application **[Tab # 19, Record on Application]** did not fully disclose the pertinent facts before the Court. In addition, in many instances during his three (3) days of Examination, he contradicted his own evidence, and many portions of his other evidence was subsequently contradicted by the documentary evidence and/or the oral evidence of 3rd parties;
- (h) Carl Collins has failed, substantially, to account for his exercise of Kennedy's Powers of Attorney. In particular, his attempt to "rationalize" a portion of the \$912,390 by imputing storage costs and the costs of personal services struck me as being particularly offensive and in complete disrespect to his obligations as the Attorney for Kennedy. It was also disrespectful to Kennedy personally, given the nature of the "family-like" relationship which he described as existing between Kennedy, himself and his family members since at least 2003;
- (i) The \$43,500 realized upon the 2009 liquidation of the Manulife RIF was delivered by Carl Collins to his son Greg Collins. There is no plausible basis upon which to conclude that Kennedy, during 2009, appreciated the nature and the consequences of any real estate investment undertaken by Greg Collins with her funds. Given her current mental capacity, Kennedy would be unable, personally, to execute any agreement relative to this investment, including a subscription for any share(s) upon which a dividend could be paid. To assert

otherwise, as Greg Collins has suggested, unduly stretches a reasonable person's sense of reality;

- (j) If Mr. Collins was guided by a *bona fide* belief that Kennedy's assets would eventually be inherited by him upon the death of Kennedy, pursuant to her Last Will dated August 2, 2007, he might be viewed as merely taking advances from her assets against his bequest under the Estate. Mr. Collins did appear to assert something akin to this position in his November 27, 2007 discussion with Chris McCurdy [See Tab 2, Interim Report #2]. Notwithstanding same, a testamentary instrument only speaks from the date of death, and Kennedy has not yet died. In addition, the evidence, taken as a whole, calls into question the validity of such a *bona fide* belief on the part of Mr. Collins;
- (k) The legal and beneficial interest in the \$27,200 held in Trust at Mosher Chedore and the remaining funds in the approximate amount of \$9,000 to \$10,000 from the \$43,500 RIF proceeds described by Greg Collins as being held in a bank account for his numbered company remains with Kennedy;
- (l) Interest and penalties assessed by CRA against Kennedy for the taxation years 2005-2010 were caused by Carl Collins, and Mr. Collins has failed to demonstrate why any interest and penalties that are not cancelled by CRA should be borne by Kennedy;
- (m) Carl Collins has failed to establish that he acquired the legal and beneficial interest in Kennedy's assets – *en masse* – as a result of an *inter-vivos* gift from Kennedy to him;
- (n) Substantially all (95%) of my legal fees, disbursements and HST thereon were incurred in order to ensure, to the fullest extent possible, that a full and proper accounting of Kennedy's assets were put before the Court, an obligation which should have been satisfied by Carl Collins as Kennedy's Attorney. In the final analysis, a more precise accounting of Kennedy's assets than that provided in my Reports, including this Report, is not, in my professional opinion, ever likely to be readily attainable, and certainly not without substantial costs being incurred in an attempt to secure a more precise accounting;
- (o) The evidence adduced suggest that the physical well-being of Kennedy, with the exception of a short period of time during which she did not receive certain medication, was not put at risk as a result of Carl Collins holding Kennedy's Power of Attorney;
- (p) Little reliance could be put on the evidence of Carl Collins in my attempt to arrive at an accurate and complete accounting of Kennedy's assets during the time period mid-2005 to August 2011;

(q) Carl Collins has been unable to demonstrate that he has not enjoyed, either directly or indirectly, the interest-free use of a substantial portion of Kennedy's assets over a period of approximately five (5) years), namely, Fall 2006 to September 2011. The evidence supports a view that Carl Collins has enjoyed the benefit of an interest-free use of, at least some portion, of Kennedy's assets.

PART VIII: FINAL ACCOUNTING FOR THE \$912,390

131. In order to assist the Court and the parties, I am including below my "final" accounting, which includes the evidence adduced after I submitted by Interim Report # 2, for the amount of \$912,390 identified in my Interim Report # 2.
132. The analysis which follows build upon some of the Special Statement of Facts referenced above.

Amount to be Inquired Into (as per Interim Report # 2) \$912,390 **[A]**

Less:

Pre-November 2006 Transactions	(\$150,426.71)
Relocation Costs	(575.00)
Cruises & Tours	(156,932)
Cuba Travels	(3,500)
Entertainment while on cruises & tours	(11,000.00)
Gifts to family and acquaintances and staff	(11,600.00)
Per Diems Chateau Chaplain Staff	(6,320.00)
Medical/Charitable Donations Receipts – Strong Box	(\$1,490.50)
Carl Collins' personal funds deposited into accounts	(1,000.00)
CRA Payments _ 2005 Installments	(4,430.00)
CRA Installments paid in 2007 [6,698 + \$14,182.82]	(20,880.82)
CRA Installments paid in 2010	(\$10,800.00)
Incidental livings expenses June 2005-August 2009 (51 months x \$1,000/month)	(\$51,000.00)
VITOs restaurant (\$100/week x 52 weeks/year x 3 Years may 2005 – May 2008)	(\$15,600)

Total Deductions (\$ 445,555.03) **[B]**

Outstanding & Unaccounted For Difference **[A-B]** \$466,834.97

133. Some of the above noted adjustments are referenced elsewhere in this Report, and I offer no additional comments here in relation to these items.

134. The payments to CRA are reflected in Interim Report # 2, Tab 2B.
135. Mr. Collins testified that he and his wife would accompany Kennedy, weekly, to VITOS restaurant for Dinner, and that the average weekly cost of the Dinner was \$100.00. Over a three year period may 2005 to May 2008, this amounts to \$15,600.
136. The medical/charitable donations receipts were found amongst Kennedy's personal effects in a metal storage box at the back of Carl Collins' garage.
137. In his Examination by Mr. Welsford, Carl Collins acknowledged that he had deposited a maximum of \$1,000 of his own funds into Kennedy's bank accounts. Thus, I accept this amount as an appropriate off-set to the \$912,390.
138. The incidental livings expenses for the period of June 2005-August 2009 are entirely arbitrary on my part. I have included same in this analysis simply as a "safeguard" for any incremental costs that may have been incurred by or on behalf of Kennedy between the time of her re-location to Saint John and until she was admitted into the Rocmaura Nursing Home. There was no documentation produced during theses proceedings to support an allowance of \$1,000 per month for this period of 51 months. Nor did Mr. Collins provide any evidence that would tend to support any form of incidental allowance during any portion of the period June 2005 to August/September 2011.
139. During his Examination, Carl Collins initially admitted he had taken effective control over Kennedy's finances as early as June 2006. [Collins Transcript, Volume I, Page 31, Lines 12-23]. Later, Mr. Collins took the position that he assumed effective control by late Fall 2006. [Collins Transcript, Volume I, Page 33, Lines 10-24, Page 35, Lines 16-18].
140. As such, I have re-considered my analysis of Kennedy's various accounts as reflected in Tab # 3 of my Interim Report # 2 with a view of reducing the \$912,390 by the value of disbursements through same prior to December 2005, on the premise that Kennedy might have either initiated these transactions on her own accord or might have been in a position to approve same in conjunction with or subsequent to the initiation thereto by Mr. Collins.
141. Attached hereto as **Tab # 7** is an Excel spreadsheet that summarizes these pre-December 2006 transactions through BNS Accounts "10", "26, and "89", BNS Visa Account and the BNS Non-registered Investment Account. The total value of these transactions is \$150,426.71.
142. The Court might wish to proceed cautiously with respect to accepting the entirety of the \$150,426.71 as deductions against the \$912,390. I note, in particular, the total of \$31,039.34 and \$30,008.65 as payments against the VISA Account and Various cheques, respectively, through BNS Account "10", the total of \$14,750.39 as Various Cheques through BNS Account

"89" and the withdrawals totaling \$23,766.28 from the BNS non-registered investments. These amounts total \$99,565, an amount which appears to be unreasonably high for a period of 17 months (June 2005 to November 2006). It is also possible that some portion of the \$156,932 included under the category Cruises and Tours is comprised of these amounts noted on Tab # 7, thereby providing a risk of "double-counting" the adjustments of the \$912,390. Finally, if Mr. Collins did in fact assume effective control over Kennedy's finances as early as June 2006, then the analysis reflected on Tab # 7 has been overstated by the months of July – November 2006.

143. Given the evidence adduced, it is simply not possible to conclude, with confidence, that the entirety of the \$150,426.71 is an appropriate deduction against the \$912,390.
144. On the basis of the above, the portion of the \$912,390 left outstanding and unaccounted for is \$466,834.97. The amount of \$466,834.97 will be increased, directly, should the Court conclude that any portion of the adjustments referenced under Part VIII is/are not an appropriate off-set(s) to the \$912,390.

ALL OF WHICH IS RESPECTFULLY submitted this 6th day of July 2012 at the City of Saint John and in the Province of New Brunswick.



Jack M. Blackier, LL.B., DIFA, FCA
Referee